MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2016 / 2017 SESSION

UCP4622 – CRIMINAL PROCEDURE II

(All Sections / Groups)

28 FEBRUARY 2017
Reading Time: 09:00 a.m. – 09:15 a.m.
(15 Minutes)

Answering Time: 09:15 a.m. – 12:15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.

2. This question paper consists of 3 pages with 4 questions only.

3. Attempt **ALL** questions in **PART A** which is **COMPULSORY**, and any **TWO** questions in **PART B**. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall **CLEAN** and **ORIGINAL** copies of (i) Criminal Procedure Code; and (ii) Penal Code. Students are not allowed to lend or borrow any statutes during the Examination.

5. Write all your answers in the Answer Booklet provided.

PART A: Compulsory Question [40 marks]

QUESTION 1

Han Too, a 30-year-old man was charged at the Magistrate's court with the offence of driving under the influence of alcohol under s.45A(1) of the Road Transportation Act 1957. The said offence carries a fine from RM1,000 to RM6,000 or a jail term up to 12 months.

After the charge was read and explained, Han Too was asked to enter his plea. Han Too pleaded not guilty because he did not bring enough money to pay the fine. He also claimed that he was slapped with the summons due to his refusal to give 'tea money' to one of the police officer who inspected his car. The Magistrate however rejected Han Too's plea of not guilty on the ground that the plea was frivolous and vexatious. The Magistrate recorded a plea of guilty and proceeded with the prosecuting officer ('PO') tendering the facts of the case. Han Too insisted that he was innocent and refused to admit the facts of the case. The Magistrate therefore had to record a plea of not guilty and fixed the case for case management.

As the case failed to be disposed during the case management, the Magistrate fixed the case for trial. On the day of hearing, the PO sought to make an opening speech but the Magistrate ordered him to call the first witness. Throughout the trial, the PO had called PW1-the complainant, PW2-the investigating officer ('IO'), PW3-the police officer who stopped the accused's car during the road block and PW4-the officer who measured the accused's breath using the Breathalyser to give evidence. The PO then closed his case without calling two police officers who set up the road block and offered them to the accused. Han Too raises a complaint to the Magistrate that the police officer who inspected his car during the road block was not called or offered as a witness. The PO argued that the police officer is not a relevant and material witness and he has the discretion to choose any witnesses to support his case. The Magistrate agreed with the PO and ordered both parties to make their submission.

After hearing the submission by both parties, the Magistrate found that the prosecution has established a *prima facie* case against Han Too and called him to enter his defence. Han Too elected to give sworn statement in the witness box. After he was cross-examined by the PO, Han Too requested to re-examine himself and to recall the IO for examination, but it was rejected by the Magistrate. After submission by both parties at the end of the defence case, the Magistrate found that Han Too had failed to raise a reasonable doubt as to his guilt and proceeded to record a conviction against him.

Advise Han Too whether the Magistrate has made any error of law during the trial.

(Total: 40 Marks)

Continued...

PART B: Optional Questions [60 marks]

Instruction: Attempt **TWO** questions **only**.

QUESTION 2

"The requirement of whether an accused person understands the charge, oddly enough, is not a requirement of the law. Understanding, as required by s.173 with particular reference to sub-para. (b), is demanded by Parliament only as regards the plea, and even that if the accused person had pleaded guilty..., clearly it was not mandatory for the learned Sessions Court judge to explain the charge to the appellant. No hard and fast rule is to be laid down merely from the use of the word "shall" in s.173(a) of the Criminal Procedure Code."

Per Suriyadi Halim Omar J in *Rogayah bte Che Mat v. PP* [2000] 5 MLJ 77.

Do you agree with the above judgment? Discuss.

(Total: 30 marks)

QUESTION 3

Natsu and Pororo were charged for an offence of using criminal force to deter a public servant from discharging his duty under s.353 of the Penal Code. Both the accused were first charged on 8 November 2015 before the Magistrate's court and bail was allowed at RM1,000 each and hearing was fixed on 2 March 2016. Since then the case was adjourned several times mainly on the grounds that either Natsu or Pororo or both of them were absent. Warrants of arrest were issued against them. On 7 May 2016, they surrendered themselves to court. Natsu explained that he was ill and fell asleep on taking some medicine and produced a medical certificate in support. Pororo said he mistook the date.

After viewing the history of the case, the Magistrate was not satisfied with Pororo's explanations. As a result, he revoked the bail and committed him to custody. Meanwhile, Natsu's bail was increased from the original RM1,000 to RM1,500 with one surety and ordered him to surrender his international passport to the court. The case was finally fixed for hearing on 25 June 2016. Pororo reapplied for bail but it was turned down by the Magistrate.

Advise Natsu and Pororo.

(Total: 30 marks)

Continued...

QUESTION 4

Reborn, a 26 year old security guard pleaded guilty on two charges. The first charge was that of theft of a bicycle under s.379 of the Penal Code and the second charge was that of causing injury to one Arcobaleno using one blunt object an offence under s.324 of the Penal Code.

Having then considered the plea in mitigation of the accused, the Magistrate sentenced him to one year's imprisonment on the first charge. On the second charge he was sentenced to two year's imprisonment and RM2,000.00 fine in default 14 days' imprisonment. The imprisonment sentences were to run concurrently. The Magistrate felt that a lenient sentence must be imposed following a guilty plea as it saves time and costs and that a long prison term will not necessarily reform the accused. However, due to the fact that the accused had two previous convictions of which one was for theft and one for dishonestly receiving stolen property, he had to impose the sentence of whipping by two strokes of the rattan.

Reborn appealed against the sentence of whipping while the Deputy Public Prosecutor ('DPP') cross-appealed alleging inadequacy of sentence. The DPP, contended that the Magistrate had placed undue emphasis on the guilty plea of the accused and had not considered the element of public interest in imposing sentence.

As the presiding judge, decide whether the Magistrate had erred in principle in imposing the sentence appealed against.

(Total: 30 marks)

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